

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Red Lion Colonial Inn
Helena, MT 59620

January 10, 2005

Commission Members Present: Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; Shane Colton; Vic Workman.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director, and FWP Personnel.

Guests: See January, 2005 Commission file folder.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of Commission Minutes of January 6, 2005 Conference Call**
- 3. Approval of Commission Expenses through December 31, 2004**
- 4. Introduction of Commission Members (Three appointed by Governor Schweitzer in January, 2005)**
- 5. Reconsideration of the Bison Hunting Decision of December 16, 2004**
- 6. Regulations for the 2005-2006 Bison Hunting Season - Tentative**

1. Opening - Pledge of Allegiance. Chairman Steve Doherty called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes of January 6, 2005 Conference Call. Chairman Doherty deferred action on the January 6, 2005 minutes until the February meeting.

3. Approval of Commission Expenses through December 31, 2004. Chairman Doherty deferred action on the December Commission expenses until the February meeting.

4. Introduction of Commission Members (three newly appointed by Governor Schweitzer). Director Hagener introduced the Commission members. Steve Doherty, Shane Colton, and Victor Workman were recently appointed to the Commission by Governor Schweitzer to replace Dan Walker, John Lane, and Mike Murphy, whose terms expired the first of January. Tim Mulligan and John Brenden continue to serve as appointees from Governor Martz's administration.

Steve Doherty, Chairman, represents District 3 and is based out of Great Falls.
Shane Colton represents District 5, and is based out of Billings.
Victor Workman represents District 1, and is based out of Whitefish.
Tim Mulligan, Vice-Chairman, represents District 2, and is from Whitehall.
John Brenden represents District 4, and is based out of Scobey.

Doherty asked the Commissioners to tell a little about themselves and state what they hope to achieve while on the Commission.

Shane Colton grew up in the farming community of Denton. Shane is an attorney, and resides in Billings. He hopes to increase hunter access across the state, and is hopeful of reaching resolutions today.

Tim Mulligan owns and operates a convenience store in Whitehall, where he grew up, and he comes from an agricultural background. He is married and has two grown kids. He is interested in the conservation of fish and wildlife, as well as the culture of the state, and hopes to maintain as well as obtain additional conservation easements and access for sportsmen.

John Brenden operates Brenden Farms outside of Scobey and also resides part-time at Ashley Lake. He is married and has grown children. He is supportive of Fish, Wildlife & Parks, and would like to see as many hunting and fishing opportunities as possible for both residents and non-residents. He supports recreational opportunities for the general population, and wants to see that all interest groups are provided equal opportunities.

Victor Workman lives in Whitefish and is in the field of real estate. He is married and has one son. He echoes Commissioner Brenden's philosophies regarding recreational opportunities, and wants to be an integral part of the Commission.

Steve Doherty was born and raised in Great Falls. He served Montana as a Senator for twelve years and is an attorney. He completed Hunter Education at the age of 12, and advocates resources, people, and air and water quality. He has worked hard in the past, and will continue to do so.

5. Reconsideration of the Bison Hunting Decision of December 16, 2004. Pat Flowers, FWP Region 3 Supervisor, provided background of the bison hunting situation which led to the December 2004 Commission decision to approve a hunt of 10 head of bison.

In 1985, the Montana legislature added buffalo to Montana's list of wild game animals, after which the first hunt was held that year. In 1991, the Montana legislature determined bison hunting was not appropriate, so it was stopped. A great deal of controversy surrounded bison hunting on both local and national levels. In 2000, the Interagency Bison Management Plan was adopted by the US Forest Service, the National Park Service, Fish, Wildlife & Parks, the Department of Livestock, and Yellowstone Park. The development of a bison management plan that would meet the criteria of all parties took ten years to complete. The fundamental premise of the Plan is to provide separation from cattle. Hazing activities begin in the winter as part of the Plan to provide separation between bison and cattle.

In 2003, the legislature delegated authority to the FWP Commission and the Department of Livestock (DOL) to initiate a bison hunt in Montana. An Interagency Plan was developed and presented to the public for comment. The Bison Management Plan is an adaptive 3-step process, of which is now in Step 1.

Three zones were identified: 1) Yellowstone National Park, 2) Outside of Yellowstone Nat'l Park with some tolerance for bison, and 3) Outside of Yellowstone Nat'l Park with no tolerance for bison.

Four alternatives are described in the EA, with 13 restrictions attached to each (listed below).

1. No public hunting – remain as is
2. Hunt by permit only from November 15 – February 15 in Zone 2 only, with permit valid for the entire season
3. Same as Alternative 2 except it changes the area of hunting to include both Zone 2 and Zone 3
4. Hunt by permit in all areas outside of the Park with an increased the number of permits valid over 10-day intervals

Restrictions to all four alternatives:

1. Hunting will be restricted to individuals with permits issued via a drawing process similar to that employed for other special permits issued by MFWP. Hunts will not be administered via a call-up list.
2. Fee structure will follow SB395 (MCA 87-2-113: \$75 for residents, \$750 for nonresidents).
3. Hunters will not be allowed to harvest bison that have been vaccinated for brucellosis within the FDA-mandated withdrawal period (the time interval between vaccine administration and proven safety for meat consumption by humans). The withdrawal period for the vaccine most likely to be used, RB51, is 21 days.
4. Weapons will be limited to modern rifles firing center-fire cartridges with bullet weights of 150 grains or higher.
5. Hunting will be allowed on public land and on private land with landowner permission.
6. No bison hunting will be allowed within 100 yards of major highways in areas open to bison hunting to protect public safety and minimize traffic obstructions. This would initially include segments of Highways 20, 191, and 287 on the western boundary of Yellowstone National Park (YNP) and Highway 89 near the northern boundary of YNP. Hunting on National Forest lands will follow restrictions in USFS order 36 CFR 261.10 (d) (firearm discharges are prohibited within 150 yards of a residence, building, campsite, developed recreation site, or occupied area or across a forest service road or body of water).
7. All hunters will be advised of restrictions and special problems that might be encountered in a bison hunt near YNP in application announcements.
8. Applicants who draw permits will be provided with information on the most effective ways to kill bison and on carcass handling procedures that will minimize meat spoilage and brucellosis infections in humans.
9. If a preference system is created, hunters that apply and do not draw permits will be given preference in the same manner that preference points are awarded in other special permit hunts.
10. Bison hunting will be allowed only between November 15 and February 15.
11. Bison permits will be valid in both hunting areas (areas near West Yellowstone on the western boundary of YNP and areas near Gardiner on the northern boundary of YNP).
12. Agencies involved in bison or land management in areas of Montana with wild bison will be informed or, in the case of MDOL (a legislatively mandated partner in bison management in Montana), consulted on changes in hunting regulations.
13. Permit numbers, hunting district boundaries, and season structure can be modified by the MFWP Commission. When bison are tolerated outside YNP in larger areas and during longer portions of the year, more permits can be issued.

The draft EA generated 891 written responses, with the majority opposed to the hunt as written in the draft. Jeff Hagener, Marc Bridges (DOL Administrator), and Tom Linfield, (State Veterinarian), authorized Alternative 3, which includes all areas outside of Yellowstone. One to twenty-five permits were specified during a season comprising of November 15 – February 15. Alternative 3 was modified based on concerns by the public that areas where hazing occurred would not guarantee a fair chase hunt if animals were being pushed. Those areas were then eliminated from the hunting area, which reduced the hunting area drastically. During this time of year, mid-January, the only conceivable hunting would be in the Eagle Creek area north of Gardiner. The Absaroka Beartooth Wilderness Area is available, although there are few animals there, and it is difficult to get into and tough to get a bison out of.

Following the completion of the EA, the tentative season proposals were presented to the Commission at the October meeting. The proposal was for 5 permits, due to a shortened season in a small area. The Commission increased the proposal to 25 permits. Public comment was accepted on the tentative proposal for two months, resulting in 191 comments, of which 104 were in favor and 87 were opposed. At the December Commission meeting 5 permits were again proposed by the Department in the limited area during the shortened season. The Department wanted to be conservative so as to make the hunt successful. Flowers said FWP wants to get sportsmen involved with bison management; the support of sportsmen is important for restoration purposes.

The Commission approved a hunt of 10 bison at their December meeting. Applications were accepted until January 3, 2005 and the drawing was scheduled to be held January 7, 2005.

Flowers said there are basically three options at this point. One is to proceed with the 10 permits and the hunt commencing January 15, creating negative publicity. A second option is to issue fewer permits which would please some people, would invest some sportsmen, and might diminish some bad publicity. A third option would be to eliminate bison hunting this year, which would displease some applicants, but would please those who are against the hunt, and would create no bad publicity.

Mulligan asked Flowers how many bison are available now in the specified hunting area. Flowers said there have been three bison on Decker Flats and three to six distributed throughout the Eagle Creek area. There are very few.

Colton asked why Alternative 3 was not approved in its entirety. Flowers explained that it was a matter of timing from when the EA was begun and the public review process ended. The Department tried to expedite the process, but there are many steps involved.

Colton pointed out that the quota of 10 was passed even though it was never an alternative put forth in the EA. Flowers said that although it was not specifically addressed, it was a proportional reduction for impacts of the hunt, and was consistent with the decision. When Doherty questioned whether a one-month analysis was conducted, or only a three-month analysis, Flowers replied only the three-month analysis. Flowers said this hunt was to allow sportsmen the role as hunters and not the perception of sportsmen as control officers.

Active hazing is occurring, and as it is not appropriate to hunt and haze at the same time, Alternative 2 was the best choice even though that narrows down the hunt area to approximately 22,000 acres. Perhaps DOL might be willing to limit their activities during the specified period of time. Flowers added that the Special Elk Season also began last weekend.

Childress said FWP is in the process of soliciting comments on big game season proposals for next year, which includes bison. The bison hunt was approved at the December meeting, and so were the 2005-2006 bison hunting season dates. FWP has lined out an overall agenda for discussion, which includes a full bison season. Based on that discussion, the final decision would be made in August 2005. Public comment will be accepted until the February Commission meeting.

Brenden said he finds it ironic that Wyoming issues 90 permits and there is no public outcry. He feels the hunt is necessary. Wyoming has contracted Brucellosis, and Montana needs to protect its Brucellosis-free status. Hunting 10 will not stop Brucellosis, but it's a start. The idea that we will be blackmailed by groups who refuse to do business and commerce with Montana has not worked before and will not work now.

Workman asked who established the hazing procedures, and asked if hazed bison act different than those who wander out of the Park. He suggested that the hazed bison would provide more of a fair chase opportunity. Flowers said FWP does not feel that way. The past Commission attended and watched a hazing operation in 2004, and it amounts to a group of bison being pushed in front of people on horseback. Putting hunters in that situation places them in a circumstance which consists of agency people pushing bison in front of them, which does not provide a fair chase hunt. Flowers said it is better to have bison move naturally rather than be pushed. Workman asked how often bison are hazed. Flowers said it is done as needed, depending on where they are, and how many are out. It can be daily.

Doherty asked if there was hazing in the Eagle Creek area, to which Flowers replied no, they are allowed to roam free there. Doherty asked if there is a firing line issue. Flowers said we will have to see, but it probably will not be to the same extent as when hunting elk, due to migration differences.

Kurt Alt, FWP Region 3 Wildlife Manager, said the firing line situation pretty much disappeared when the Gardiner late season hunt took effect in 1975. The difference is that there would be fewer bison at one time.

Colton asked if Zone 2 could be opened at any other time, to which Flowers said there probably are some opportunities. The Interagency Bison Plan was developed prior to meeting with the Commission, but DOL might be amenable to adjusting hazing operations during a given timeframe. This season was designed to study the bison's migration habits.

Hagener said hazing is conducted in compliance with the Interagency Plan. The Plan requires hazing. FWP must meet the criteria identified in the plan.

Doherty asked for public comment from the audience.

David Stalling, Missoula, President of the Montana Wildlife Federation said they support fair chase hunting and support the Governor's decision to postpone the hunt this year. They feel FWP should manage the bison, and bison should be given more room to roam outside of the Park. MWF urges the Commission to delay the hunt until bison management is under the jurisdiction of FWP.

Stan Frazier, Helena Hunters and Anglers Association, said they are displeased with the involvement of DOL, the restriction of bison to the Park, and the issue of raising livestock on public lands. He said the solution is to get the cattle off the public lands and allow the bison to exist on those lands.

George Nell, Gardiner resident, said bison need habitat outside the park. He said the Tribes need included, and to get DOL out of the issue.

Bill O'Connell, Gallatin Wildlife Association, said FWP has done an outstanding job, especially considering the restraints they are under. FWP should be the lead agency to handle bison as wildlife. The Interagency Plan needs to expand the boundary zones in Zone 2, and restrict boundaries in other areas. A hunt would create an economic boon as a money generator. He supports the Governor's decision to hold off awhile. He said to go ahead with the drawing and stall until next fall.

Joe Gutkosky, Gallatin Wildlife Association, agrees with the Governor's decision to put the bison hunt off for a year. Old videos and photographs when 586 bison were killed will be detrimental to Schweitzer's administration. He said bison are wildlife and not diseased livestock. Buffalo are suited for Montana – they should be able to utilize the National Forest.

Glenn Hockett, Gallatin Wildlife Association, said 8,500 applicants share the desire that buffalo should be managed by FWP as wildlife. He supports Schweitzer's decision to wait.

Will Patrick, Belgrade, said FWP should manage bison, not DOL. Bison needs managed as a wildlife animal. Dropping the hunt this year will save Montana from another media black eye. It is absurd that livestock next to the Park may be affected.

Fred Easy, Prickly Pear Sportsmen's Association, said that organization has historically supported hunting bison, and he shot one in 1989. That was not a hunt due to the way FWP managed it. The attitude of FWP has not changed much. They supported the cooperative agreement with DOL.

Kerry Taggart, who lives on Horse Butte Peninsula outside of Yellowstone Park, supports no action at this time until a fair chase hunt can be developed, and wants FWP to manage the bison as a wildlife species. They would also like more communication due to safety issues on the Butte during hazing operations. DOL has not considered safety of the neighborhood, the skiers, the snowmobilers, etc. There is a waste of taxpayer's money, for example when one helicopter and four ground agents chase one bull. Private property rights are infringed upon during hazing effort.

Jim Wisman, Gallatin Wildlife Association, thanked the Commission for slowing down the process and rethinking it. He opposes this hunt because DOL has authority – that needs changed. There is opportunity to expand the area by utilizing the neighboring game ranges. He supports a bison hunt when FWP has managing authority of bison and there is a larger landscape that tolerates bison.

Harmon Ranney, Helena, said the hunt was legislatively authorized, and approved and advertised by the Commission. The legislature makes the law and Commission makes the rules. FWP expects to learn a lot about conducting future hunts, and postponing it will delay this learning process. This hunt has the element of fair chase. Making this decision for political decision is wrong. Threatened boycott by various groups will make little impact on Montana. Wyoming has successful bison hunts. He said cancellation of the hunt is violation of his rights, and he asked the Commission not to postpone the hunt.

Jennifer Nitz of West Yellowstone opposes the hunt. DOL is part of the management team due to their experience with diseases. Hunting ten bison will not reduce the chance of brucellosis. Hunters will not know if they shot a diseased bison. Brucellosis only affects a small amount of pregnant cows.

Mike Mease, Buffalo Field Campaign, has spent a great deal of time with buffalo over the last decade. There is nothing in the documentation about Native Americans being included in the formulation of the bison hunt. Ten tribes have treaty rights and should be included in the procedure. Bison are seen as pests, but are assets. He is not against the hunt, but wants to see logic and foresight. The hunt needs to be studied for the long term and not as a quick fix. The fair chase philosophy is flawed. The bison are supposed to migrate for three months out of a year, and then migrate into the Park again and be nice to tourists. They need to be treated as wildlife.

Jim Manning, Prickley Pear Sportsmen's Association, said sportsmen are not in agreement. Do not delay or cancel the hunt. He feels the proposed hunt was the best that could be done under the situation. It was a legislative decision to reauthorize the hunt. Livestock industry does have valid concerns. He urged Commission to proceed with the hunt as adopted.

Steve Pilcher, Montana Stock Growers Association, said they had supported Senator Perry's bill in 2003. The bison population in Yellowstone exceeds the ground available. More area needs to be given them. Hunting is a population control measure. They are concerned with the disease issue. Poor management by the federal government has created this situation, and they need to address the disease issue.

Josh Osher said the cows are moved out in October and come back in June. The brucellosis transmission risk after mid-May is zero. Scavengers remove fetuses, and brucellosis bacteria dissolve. There are statistics on brucellosis, and none of these have led to changes in the Bison Management Plan. The livestock industry does not want buffalo. There has never been any transmission of brucellosis in Teton National Park. No free-ranging animal has transmitted brucellosis to livestock. The decision was made to benefit livestock producers and not for the entire country. Elk also carry brucellosis. The risk of brucellosis is overblown and out of proportion. There is no danger on the west side of the Park. FWP must take over the bison resource.

Bill Whitehead, Assiniboine Sioux Tribal Counsel, said he served in the legislature in 1997-98 when Montana was embarrassed by what happened in the Park with the slaughter of the buffalo. Many of the tribes are seeking addition buffalo for cultural and economic reasons. Tribes use parts of buffalos for ceremonies and cultural reasons. He wants a delay of the hunt to enable the state and the tribes to have a dialogue on this long overlooked issue of the buffalo. Tribes feel the buffalo must not be killed.

Doherty asked if the EA considered private hazing. Flowers said hazing is supposed to be conducted by agency personnel, however the Park Service may enlist private individuals without FWP or DOL knowledge.

Colton said he is not against hunting bison and wants to see a sustainable hunt take place. He is concerned that the decision to shoot 10 to see how it goes is not suitable. He wants hunters to have an enjoyable hunt. He hopes to open up more area that would disperse hunters. He would like to somehow work Zone 2 into this.

Mulligan said he opposed this hunt as a tentative, as a final, and he still opposes it. He supports bison hunting, but his concerns lie in that the area has been reduced and the timeframe is short, thereby putting hunters in a difficult situation. He said he cannot imagine a hunter wanting to hunt with protestors and cameras present. He is not interested in the political aspect of this whole issue, but simply feels it is a logistical issue. He would not have supported the EA if he did not believe in hunting bison.

Brenden said it is not wise to get into a conflict with the agricultural people in Montana as they provide the private land access. Without access, there will be no hunting, and hunting is critical to Montana's economy. He wants people to have the opportunity to recreate and hunt and fish. He feels it would be a bad decision to postpone the hunt. Bison hunting has been discussed for over 10 years. He said Wyoming is not having trouble with their hunt.

Doherty said he does not succumb to political pressure or blackmail tactics, but does believe in compromise. A long-term solution is necessary, and work must begin right away. He is concerned with the EA analysis, about fair-chase issues, and about the area and season length. He wants a sustainable buffalo hunt.

Vic Workman said that should the Commission decide to postpone the hunt this year, his intention is to provide a fair-chase hunt with expanded boundaries next year. He said to conduct the drawing, and if there is a way to offer a fair-chase hunt in the next month, then it should be done. If not, then carry the names over to next year.

Colton asked if the tentatives are planned, and if so, did they establish a number of bison to be harvested. Childress said the tentatives are based on the spectrum of the area and 25 permits. The Department tried to set parameters as broadly as possible so an EA would not have to be conducted every year. Childress suggested offering an option to the successful applicants to use their permit next year.

Mulligan asked if permits could legally be held for a year. Bob Lane, FWP Chief Legal Counsel, said according to Montana Statute, licenses are good for one year, and that year ends in February. Licenses cannot carry over once they have been issued. A pool of applicants can be kept until a drawing is held, and additional applicants can be added to that existing pool of names. Workman asked if the Commission could issue the licenses for next year. Lane said it is a possibility.

Mulligan asked if licenses could be issued for next year when the rule for next year has not yet been set. Lane replied that there are policy decisions as well as legal decisions involved. The Commission can attempt to structure drawings to deal with specific situations, but whether they are wise decisions is up to the Commission. A drawing held now for next year's season is a mixture of law and policy. It is a legal issue as to whether it would be valid if the season is not set yet.

Colton asked if the Department can issue a new valid license that starts November 15 through the rest of the season that would replace a license that is issued this year and expires February 28, 2005. Lane said no, a new drawing would need to be done. Lane said he's not comfortable with drawing for a season that is not set yet – the statute does not set the structure that way. If a license is refused by one person, it is offered to the next person.

Mulligan asked if there is any way to expand the opportunity this year. Flowers said there is not, due to limits set forth in the Environmental Assessment as well as the commitment made with DOL. Brenden said although time constraints are difficult, he thinks if there were a drawing, hunters would come.

Mulligan said he understands what the Commissioners are attempting to accomplish, but he struggles to see how it can be done successfully. It's not about Brucellosis, but about a hunt that is successful. This is not the way to accomplish it. It is good to see the passion of the people; the parties involved in management of bison will notice how important this issue is to the state.

Action: Mulligan moved and Workman seconded the motion to postpone the hunt for this year with full expectation that we look at a full three-month hunt next year.

Discussion: When asked what will happen regarding the application fees, Childress said all fees would be refunded to the applicants, to include the on-line fees.

Colton asked about carrying the application list past February 28. Lane said that could most likely be done, but applicants would have to be offered the option of being included in the new drawing, and anyone else who would want to apply would need to be included. Colton asked if those applicants already in the drawing could be left in the system if they still wanted to be included later. Hagener said this has not been done before, the Department would have to look into the capabilities of the automated licensing system. Childress said the drawing files are cleared because of validation of conservation licenses etc. and is outside the normal agency operation, however the possibility could be explored.

Brenden said all of these people who applied on time played by the rules, and the Commission is opening itself up to criticism if additional applications are added to the current pool being held which would reduce the chance for success.

Flowers reiterated that to remain compliant with the EA and the alternative selected by the decision makers, FWP is not able to extend the length of the season or expand the area. The pattern of behavior suggests that the bison will only be available in the Eagle Creek area. Kurt Alt, FWP Region 3 Wildlife Manager, said weather dictates dispersion of the herds. He added that there are a variety of reasons not to extend the season beyond February 15. Colton said putting bison hunters in with elk hunters in the same area and timeframe would create problems, not to mention the spectators who would likely be in the area.

Mulligan stated that his family has been in agriculture for years, and he wants to protect the brucellosis-free status that Montana enjoys. A successful hunt would be the best thing that could be done. He does not oppose this hunt because of concern that the bison are not wild and running, they won't be that way next year either. They won't move until they learn. To establish a fair-chase hunt the animals need to know man is chasing them. Next year the hunt will cover a greater area and a longer period of time.

Childress said the use of the word "postpone" in the motion concerns him. He suggested that if the motion passes, a second motion be made regarding the application fee refunds.

Mulligan said the intent of his motion was that FWP not hold a bison hunt this year (January 2005 – February 2005).

Action: Motion carried. Four in favor – 1 opposed (Brenden).

Action: Brenden moved and Workman seconded the motion to refund the \$3.00 application fee, and associated Internet fees if applicable, involved in applying for the 2004-2005 bison hunting license. Motion carried.

Hagener suggested a work session prior to the February Commission meeting to provide an overview and orientation session for the new commissioners. The three past-Commissioners would also be invited to provide their input, after which a thank-you dinner would be held in their honor. The regular meeting is February 10, therefore his suggestion was to hold the work session the afternoon of February 9. The Commission concurred with that suggestion.

6. Regulations for the 2005-2006 Bison Hunting Season – Tentative.

Childress will provide a list of season-setting meeting dates and locations that Commissioners normally attend to gain a sense of public opinions. The meetings provide the opportunity to hear from constituents from the regions. Childress said a cover letter went out with proposed changes to big game changes for the next season. We will take public comment through end of January and those recommendations will come back to you as the basis for tentative seasons for next year.

Action: Brenden moved and Mulligan seconded the motion to adjourn. Motion carried.

Meeting adjourned at 11:47 a.m.

Steve Doherty, Chairman

M. Jeff Hagener, Director